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CASES  
AND MATERIALS  
ON AGENCY

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[2d ed.]

*University of Toronto Press  
1960*

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## P R E F A C E

Almost thirty years have elapsed since the appearance of the first mimeographed edition of the present selection of cases based on the agency relationship. At that time a "preface" written by the present editor mentioned that the subject had been "singularly neglected" in English legal literature and that the prevailing opinion considered that agency should be dealt with merely as an additional chapter to contract or tort law.

Since that time considerable attention has been devoted to the subject in England and three new texts have made their appearance in addition to a considerable amount of law review writing. While great strides have been taken in the extension of vicarious liability in the law of torts, reflecting a complete abandonment of the notion that liability is limited to "authorized" acts, in the contractual field there has not been a similar development. There, the concept of authority and its confusing terminology of "real", "implied", and "apparent", has tended to restrict development rather narrowly although, as the cases show, economic expediency frequently causes strange meanings to be read into these terms.

Apart altogether from the intrinsic importance of the agency relationship in modern society, the challenge of examining the hidden truths behind concepts like "authority", "estoppel", "knowledge or notice", makes agency a rewarding subject for academic instruction. In a sense, the present collection of cases deals with clusters of topics that are frequently ignored in the basic property, contract and tort courses, and are often taken for granted in other fields such as commercial law and companies. For example, problems of restitution or quasi-contract form a large part of Chapter VII, while Chapter III affords an opportunity of introducing students at an early stage of their education to the far-reaching effects of the fiduciary principle.

There is a temptation in a crowded curriculum to push agency to one side or reduce its scope. Persons advocating this procedure are usually unfamiliar with the variety of basic problems that, in the editor's opinion, crop up in connection with agency but which are by no means confined to that relationship. A curriculum calls for "teachable" subject matter in the sense of producing problems designed to develop powers both of analysis and synthesis. On this score agency should have a high priority. From the simple two party situations that comprise almost the entire first year programme it has the additional merit of multi-party situations and the adaption of first year material to such situations; further, it reaches forward to commercial branches of law in the later years.

The present selection of cases was originally designed for a sixty hour course. At present it is unlikely that more than forty-five hours can be allotted to its development. Under those circumstances, an individual instructor may feel that he must make selections. Rather than reduce the material to an arid collection of "principles"--the very thing that has impeded development of the subject in the past--the editor has retained material sufficient to raise problems which have demonstrated their worth as teaching material, leaving it to individual instructors and faculties to make their choice and place their own emphasis.

Cecil A. Wright.

Faculty of Law,  
University of Toronto,  
November, 1960.

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